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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 161222999-7145-01]

RIN 0648-BG56

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Framework Amendment 5 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and Atlantic Region (FMP) as prepared and submitted jointly by the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council (Councils). If implemented, this proposed rule would remove the restriction on fishing for, or retaining the recreational bag and possession limits of, king and Spanish mackerel on a vessel with a Federal commercial permit for king or Spanish mackerel when the vessel is on a private recreational fishing trip and commercial harvest of

king or Spanish mackerel in a zone or region is closed. The purpose of this proposed rule is to remove Federal permit restrictions unique to commercially permitted king and Spanish mackerel vessels and to standardize vessel permit restrictions applicable after a commercial quota closure of king or Spanish mackerel.

DATES: Written comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0162" by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal Rulemaking Portal. Go to *www.regulations.gov*, click the "Comment Now!" icon, complete the required fields, and enter your attached comments.

- *Mail:* Submit all written comments to Rich Malinowski, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on

www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of the Framework Amendment 5, which includes an environmental assessment, Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from *www.regulations.gov* or the SERO Web site at *http://sero.nmfs.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305, or email: *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic fishery of the Gulf and Atlantic regions is managed under the FMP and includes the management of the Gulf and Atlantic migratory groups of king mackerel, Spanish mackerel, and cobia. The FMP was prepared jointly by the Councils and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems. To further attain this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable. Framework Amendment 5 and this proposed rule apply to the harvest of king and Spanish mackerel in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) and Atlantic regions.

Current Federal regulations state that a person aboard a vessel with a Federal commercial permit for king or Spanish mackerel may not fish for or retain king or Spanish mackerel in or from Federal waters under the recreational bag or possession limit if the commercial harvest for the species is closed (*i.e.*, the species, migratory group, zone, subzone, or gear is closed). This provision prevents fishers on a vessel with a Federal commercial permit for king or Spanish mackerel from recreationally fishing for or retaining bag and possession limits for these species

outside of the applicable commercial season. An exception to this restriction currently applies to vessels that have both a Federal commercial and a charter vessel/headboat permit for king or Spanish mackerel. When operating as a charter vessel or headboat, the exception allows persons aboard these vessels to recreationally fish for or retain king or Spanish mackerel in or from Federal waters under the recreational bag or possession limits.

The regulations specifying restrictions applicable after a commercial quota closure (50 CFR 622.384(e)) were originally necessary when the Gulf migratory group of king mackerel (Gulf king mackerel) had been overfished in the early 1990s, as a means of controlling fishing effort. In 2014, the most recent stock assessment of Gulf king mackerel and Atlantic migratory group king mackerel (Atlantic king mackerel) concluded that both Gulf and Atlantic king mackerel are not overfished or undergoing overfishing.

This provision does not currently affect the recreational harvest of Spanish mackerel in the Gulf (Gulf Spanish mackerel), given the difference in how this migratory group is managed. Gulf Spanish mackerel is managed under a stock annual catch limit (ACL). Under the applicable accountability measures, the Spanish mackerel

commercial and recreational sectors in the Gulf close at the same time if the stock ACL is reached or projected to be reached, as specified in § 622.388(c)(1). Thus, because the sectors close at the same time, the restriction described above does not apply in practice to those fishing for Gulf Spanish mackerel. In contrast, the accountability measures applicable to the commercial sector for king mackerel in the Gulf and Atlantic, and Spanish mackerel in the Atlantic, would close the applicable commercial sector independently from the recreational sector if the commercial landings reach or are projected to reach the applicable commercial quotas (§ 622.388(a)(1)(i), (b)(1)(i), and (d)(1)(i)).

Management Measure Contained in This Proposed Rule

For the commercial sector, this proposed rule would remove the current prohibition that a person aboard a vessel with a Federal commercial permit for king or Spanish mackerel may not fish for or retain king or Spanish mackerel in or from Federal waters under the bag or possession limits if commercial harvest for the applicable species is closed in a specific zone or for a certain gear type, unless the vessel also has a federal charter vessel/headboat permit and is operating as a federally permitted charter vessel or headboat. Therefore, if NMFS

implements this proposed rule, commercial fishers with a Federal commercial permit for king or Spanish mackerel would be able to use their permitted vessels to recreationally fish for these species and retain the recreational bag and possession limits outside of the commercial seasons for those species.

Measures Contained in this Proposed Rule not in Framework Amendment 5

In addition to the changes to implement Framework Amendment 5, the proposed regulatory text contains changes consistent with the proposed regulatory text to implement Amendment 26 to the FMP, which is currently available for public comment (81 FR 95941, December 29, 2016). The proposed regulatory text to implement Amendment 26 includes numerous changes to the regulations implementing the FMP, including revisions to terminology and to the management boundaries for the Gulf of Mexico and Atlantic migratory groups of king mackerel. Pertinent changes are reflected in the proposed text below, as well, for consistency in language. In addition, to improve clarity, we have made specific changes to § 622.384(e)(3), proposed to be renumbered as § 622.384(e)(2), and to § 622.386.

Classification

Pursuant to section 304(b) (1) (A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would not be expected to directly affect any small entities. The proposed rule would remove the restriction on fishing for and retaining the recreational bag limit of king mackerel on a vessel with a Federal commercial permit for king mackerel when the vessel is on a recreational trip and

commercial harvest of king mackerel in that zone is closed. Similarly, it would remove the restriction on fishing for and retaining the recreational bag limit of Spanish mackerel on a vessel with a Federal commercial permit for Spanish mackerel when the vessel is on a recreational trip and commercial harvest of Spanish mackerel in a zone or for a certain gear type is closed. Under this proposed rule, king or Spanish mackerel that are recreationally harvested on commercial vessels would not be permitted to be sold. Therefore, commercial fishers on these vessels would only be affected as recreational anglers. Recreational anglers, who would be directly affected by this proposed rule, are not considered small entities under the RFA, and are, therefore, outside the scope of this analysis. 5 U.S.C. 603. Small entities include "small businesses," "small organizations," and "small governmental jurisdictions." 5 U.S.C. 601(6) and 601(3)-(5). Recreational anglers are not businesses, organizations, or governmental jurisdictions. No other small entities that would be directly affected by this proposed rule have been identified.

The information provided above supports a determination that this rule would not have a significant economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have

a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, South Atlantic, King Mackerel, Spanish Mackerel.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator
for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.379, revise the last sentence in paragraph (a) to read as follows:

§ 622.379 Purse seine incidental catch allowance.

(a) * * * Incidentally caught king or Spanish mackerel are counted toward the quotas provided for under § 622.384 and are subject to the prohibition of sale under § 622.384(e) (2).

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3. In § 622.384, revise paragraph (e) to read as follows:

§ 622.384 Quotas.

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(e) *Restrictions applicable after a commercial quota closure.* (1) If the recreational sector for the applicable species, migratory group, zone, or gear is open, the bag and possession limits for king and Spanish mackerel specified in § 622.382(a) apply to all harvest or possession for the closed species, migratory group, zone, or gear in or from the EEZ. If the recreational sector for

the applicable species, migratory group, zone, or gear is closed, all applicable harvest or possession in or from the EEZ is prohibited.

(2) The sale or purchase of king mackerel, Spanish mackerel, or cobia of the closed species, migratory group, zone, or gear type is prohibited, including any king or Spanish mackerel taken under the bag and possession limits specified in § 622.382(a), or cobia taken under the limited-harvest species possession limit specified in § 622.383(b). The prohibition on the sale or purchase during a closure for coastal migratory pelagic fish does not apply to coastal migratory pelagic fish that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

4. In § 622.386, revise the introductory paragraph to read as follows:

§ 622.386 Restrictions on sale/purchase.

The restrictions in this section are in addition to the restrictions on the sale or purchase related to commercial quota closures as specified in § 622.384(e)(2).

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